

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Georgia Rochon	Team: Squad #2	CCRB Case #: 201907494	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/22/2019 3:15 PM	Location of Incident: [REDACTED]	Precinct: 69	18 Mo. SOL 2/22/2021	EO SOL 10/9/2021	
Date/Time CV Reported Thu, 08/22/2019 4:31 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/22/2019 4:31 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Aracena	18880	951470	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Gwendolyn Bishop	04203	952470	069 PCT
2. POF Lisa Cordero	00445	925118	069 PCT
3. POM Pedro Sandoval	01311	949615	069 PCT
4. POM Darren Zhumi	11346	966410	069 PCT
5. LT Richard Custodio	00000	922194	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Aracena	Abuse: Police Officer Jose Aracena threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Jose Aracena	Force: Police Officer Jose Aracena used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Jose Aracena	Abuse: Police Officer Jose Aracena threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]

Case Summary

On August 22, 2019, § 87(2)(b) filed this complaint over the phone.

On August 22, 2019, at approximately 3:15 p.m., § 87(2)(b) attempted to deposit money via the drive through at the TD Bank located at § 87(2)(b) in Brooklyn. He was informed over the intercom that he had to deposit his money inside, then entered the building with his money in the tube provided by the bank. He requested to speak with a manager, § 87(2)(b) who asked § 87(2)(b) to return the tube, as it was bank property, or risk being arrested. At this time, Police Officer Jose Aracena of the 7th Precinct, who was working paid detail at the bank, approached and told § 87(2)(b) that he would be arrested if he did not take his money out of the tube and return it (**Allegation A—Abuse of Authority—Threat of arrest—§ 87(2)(g)**). § 87(2)(b) did so, and began arguing with Police Officer Aracena, who told him to leave the bank, then grabbed him by the upper arms and pushed him three times towards the bank door (**Allegation B—Force—Physical force—§ 87(2)(g)**). Once outside, Police Officer Aracena allegedly told § 87(2)(b) he would spray him in the face with Mace (**Allegation C—Abuse of Authority—Threat of force—§ 87(2)(g)**). § 87(2)(b) called 911 to report Police Officer Aracena, and a number of officers responded to the bank.

Video footage from the TD Bank was obtained in the course of this investigation. It is located in IAs #45-57 (Board Reviews 04-16), and is summarized in IA #83 (Board Review 03). Body-worn camera (BWC) footage from the BWCs of the officers who responded subsequently was also obtained in the course of the investigation, and it is located in IAs #78-80 (Board Review 17-19) and is summarized in IA #84 (Board Review 20). Police Officer Aracena was not equipped with a BWC at the time of the incident.

Findings and Recommendations

Allegation (A): Police Officer Jose Aracena threatened to arrest § 87(2)(b)

§ 87(2)(b) provided a telephone statement on August 27, 2019 (Board Review 21) and was interviewed at the CCRB on August 28, 2019. § 87(2)(b) provided a telephone statement on October 9, 2019 (Board Review 22). Police Officer Aracena was interviewed at the CCRB on October 9, 2019.

§ 87(2)(b) testified that he was attempting to deposit approximately \$3,000 via the bank drive through on August 22, 2019. He put the money in the tube used to pass the money inside the bank, and was informed that he would have to make the deposit inside. He entered the bank holding the tube with his money, and requested to speak with a manager. § 87(2)(b) entered the lobby, and told § 87(2)(b) they could speak in five minutes, when he was done with lunch. § 87(2)(b) continued to question § 87(2)(b) and § 87(2)(b) asked § 87(2)(b) to return the tube. § 87(2)(b) replied that he did not feel comfortable standing in the lobby with his cash outside the tube. § 87(2)(b) repeated that that tube was bank property and stated that § 87(2)(b) would be arrested by Police Officer Aracena, who was standing nearby, if he did not return

the tube. § 87(2)(b) refused to return the tube, and § 87(2)(b) told him to return the tube or risk being arrested a second time. Police Officer Aracena moved closer, and told § 87(2)(b) “If you don’t take the money out now, you’re being placed under arrest.” § 87(2)(b) took the money out of the tube, and placed the tube on the bank counter.

In his telephone statement, § 87(2)(b) stated that he was not personally familiar with § 87(2)(b) prior to the incident, but knew from his employees that it had been decided that § 87(2)(b) would be prohibited from depositing money via the drive through because he had accused the bank of not crediting his account with the proper amount of money in the past. Once § 87(2)(b) entered the bank, he requested to speak with a manager, and § 87(2)(b) told § 87(2)(b) he was just finishing his lunch break and would be with him shortly. He asked § 87(2)(b) repeatedly to return the tube so that drive through customers could use it, and § 87(2)(b) refused to do so and began to raise his voice. § 87(2)(b) told § 87(2)(b) that he would be escorted out of the bank if he did not return the tube, at which point Police Officer Aracena approached, and told § 87(2)(b) to calm down and return the tube. § 87(2)(b) began yelling, and Police Officer Aracena told him to return the tube, or he would be escorted out. § 87(2)(b) did not recall Police Officer Aracena threatening to arrest § 87(2)(b).

§ 87(2)(g) Clip 9 of the footage (Board Review 04) shows § 87(2)(b) entering the bank at 53:08 into the footage with the tube in his hand. He remains at the bank counter with the tube in his hand, and Police Officer Aracena approaches at 57:21. Police Officer Aracena begins speaking to § 87(2)(b) at 1:00:08, and he relinquishes control of the tube at 1:00:50 in the footage. § 87(2)(b) is not visible in the footage, which does not capture the area behind the bank counter.

Police Officer Aracena testified that he was aware of § 87(2)(b)’s history of claiming to have been “shorted” by the bank by the time § 87(2)(b) entered the store, though he had not interacted with him on any prior occasion. He observed § 87(2)(b) enter the bank and begin yelling at the teller, who asked that he return the tube. § 87(2)(b) requested to speak with a manager and said, “I’m not giving you the fucking tube back.” § 87(2)(b) asked for the tube numerous times and told § 87(2)(b) that he would be arrested if he did not return the tube. Police Officer Aracena then tapped § 87(2)(b) on the shoulder and told § 87(2)(b) that if he refused to return the tube, he would be arrested for criminal possession of stolen property. § 87(2)(b) continued to refuse to return the tube for approximately two to three minutes, at which point Police Officer Aracena stated that he would have to call for police back up if § 87(2)(b) did not return the tube. § 87(2)(b) then returned the tube.

New York Penal Law 160.40 (Board Review 23) states that a person is guilty of criminal possession of stolen property if they knowingly possessed stolen property with the intent to benefit themselves (or someone else), other than the rightful owner of the property; or impede recovery of the property by the owner.

§ 87(2)(g)

§ 87(2)(g)

Allegation (B): Police Officer Jose Aracena used physical force against § 87(2)(b) .

Allegation (C): Police Officer Jose Aracena threatened to use physical force against

§ 87(2)(b) .

§ 87(2)(b) testified that after returning the tube, he told Police Officer Aracena that the situation was outrageous, and that he had officers in his family. Police Officer Aracena then said, “You’re leaving the bank now,” grabbed § 87(2)(b)’s upper arms and pushed him towards the front door three to five times, until § 87(2)(b) was outside the bank. Once outside, § 87(2)(b) began walking backwards, at which point Police Officer Aracena told him he would “Spray him in the face with Mace,” which he held in his hand by his waist.

§ 87(2)(b) however, stated that § 87(2)(b) yelled, “Put me out, put me out!” after Police Officer § 87(2)(b) told him he would be taken out of the bank if he did not return the tube, then approached Police Officer Aracena, at which point Police Officer Aracena grabbed § 87(2)(b) and pushed him towards the door. § 87(2)(b) believed that § 87(2)(b) had not returned the tube at the point that Police Officer Aracena pushed him. While he could not recall the exact nature of this push, he stated that he did not observe § 87(2)(b) resist the push, and that he was eventually escorted outside the bank. § 87(2)(b) could not hear the interactions between § 87(2)(b) and Police Officer Aracena outside the bank.

As seen in a sub-clip of the footage (Board Review 24), after § 87(2)(b) puts the tube on the counter, he exchanges words with Police Officer Aracena for approximately 25 seconds. Police Officer Aracena then walks around § 87(2)(b) who turns around, and pushes him towards the door once. § 87(2)(b) turns towards Police Officer Aracena, and Police Officer Aracena pushes him in the chest a second and third time, until he is out the door. Once outside, Police Officer Aracena touches his hip, possibly to grab ahold of his OC spray, but it is not clear whether or not he does so.

Police Officer Aracena testified that after § 87(2)(b) returned the tube, § 87(2)(b) told Police Officer Aracena that he wanted § 87(2)(b) to leave the bank, in front of § 87(2)(b). Police Officer Aracena told § 87(2)(b) to leave the bank four to five times, and § 87(2)(b) repeatedly responded that he would not leave. Initially, Police Officer Aracena testified that he brought § 87(2)(b) to the bank door by holding § 87(2)(b)’s shoulders from behind and walking forward towards the door, and that § 87(2)(b) resisted by pushing his body backwards onto Police Officer Aracena. After viewing the footage, Police Officer Aracena testified that it accurately depicted what happened, and that he pushed § 87(2)(b) multiple times because § 87(2)(b) attempted to turn around each time he pushed him towards the door.

Once outside, § 87(2)(b) walked towards the door, and Police Officer Aracena told him that if he reentered the bank he would be arrested for trespassing. He did not recall whether he pulled out his OC spray, and stated that he did not tell § 87(2)(b) he would spray him in the face with Mace or threaten to use force against him in anyway. However, he did tell § 87(2)(b) that if he got in his face, he would be arrested for disorderly conduct.

§ 87(2)(g)

[REDACTED]

Patrol Guide Procedures 221-01 (Board Review 26) and 221-02 (Board Review 27) allow officers to use a reasonable degree of force when it is reasonable to ensure the safety of a member of the service, or when a civilian is refusing to comply with a lawful order.

Patrol Guide Procedure 221-07 (Board Review 25) allows officers to use O.C. pepper spray to gain or maintain control of persons who are actively resisting resist or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one additional CCRB complaint (Board Review 01).
 - § 87(2)(b)
- [REDACTED]

- Police Officer Aracena has been a member-of-service for eight years and has been a subject in three additional CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On October 28, 2019, a request for any Notice of Claim filed by § 87(2)(b) in regard to the incident was submitted to the New York City Office of the Comptroller. Any response will be added to the case file upon receipt.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 02)

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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